

## Centers for Medicare & Medicaid Services, HHS

## § 434.20

(c) *Continued responsibility of contractor.* No subcontract terminates the legal responsibility of the contractor to the agency to assure that all activities under the contract are carried out.

EFFECTIVE DATE NOTE: At 66 FR 6403, Jan. 19, 2001, § 434.6 was amended in paragraph (a)(1) by removing “Appendix G”, effective April 19, 2001. At 66 FR 11546, Feb. 26, 2001 the effective date was delayed until June 18, 2001, at 66 FR 32776, June 18, 2001 it was furthered delayed until Aug. 17, 2001, and at 66 FR 43090, Aug. 17, 2001 it was furthered delayed until Aug. 16, 2002.

### Subpart B—Contracts with Fiscal Agents and Private Nonmedical Institutions

#### § 434.10 Contracts with fiscal agents.

Contracts with fiscal agents must—

- (a) Meet the requirements of § 434.6;
- (b) Include termination procedures that require the contractors to supply promptly all material necessary for continued operation of payment and related systems. This material includes—
  - (1) Computer programs;
  - (2) Data files;
  - (3) User and operation manuals, and other documentation;
  - (4) System and program documentation; and
  - (5) Training programs for Medicaid agency staff, their agents or designated representatives in the operation and maintenance of the system;
- (c) Offer to the State one or both of the following options, if the fiscal agent or the fiscal agent's subcontractor has a proprietary right to material specified in paragraph (b) of this section:
  - (1) Purchasing the material; or
  - (2) Purchasing the use of the material through leasing or other means; and
- (d) State that payment to providers will be made in accordance with part 447 of this chapter.

#### § 434.12 Contracts with private non-medical institutions.

Contracts with private nonmedical institutions must—

- (a) Meet the requirements of § 434.6;
- (b) Specify a capitation fee based on the cost of the services provided, in accordance with the reimbursement re-

quirements prescribed in part 447 of this chapter; and

- (c) Specify when the capitation fee must be paid.

#### § 434.14 [Reserved]

### Subpart C—Contracts With HMOs and PHPs: Contract Requirements

EFFECTIVE DATE NOTE: At 66 FR 6403, Jan. 19, 2001, subpart C consisting of §§ 434.20 through 434.38 was removed and reserved, effective April 19, 2001. At 66 FR 11546, Feb. 26, 2001 the effective date was delayed until June 18, 2001, at 66 FR 32776, June 18, 2001 it was furthered delayed until Aug. 17, 2001, and at 66 FR 43090, Aug. 17, 2001 it was furthered delayed until Aug. 16, 2002.

#### GENERAL REQUIREMENTS

#### § 434.20 Basic rules.

(a) *Entities eligible for risk contracts for services specified in § 434.21.* A Medicaid agency may enter into a risk contract for the scope of services specified in § 434.21, only with an entity that—

- (1) Is a Federally qualified HMO, including a provisional status Federally qualified HMO;
- (2) Meets the State plan's definition of an HMO, as specified in paragraph (c) of this section;
- (3) Is one of several entities identified in section 1903(m)(2)(B) (i), (ii) and (iii) of the Act, and considered as PHPs;
- (4) Is one of certain Community, Migrant and Appalachian Health Centers identified in section 1903(m)(2)(G) of the Act. Unless they qualify for a total exemption under section 1903(m)(2)(B), these entities are subject to the regulations governing HMOs under this part, with the exception of the requirements of section 1903(m)(2)(A) (i) and (ii) of the Act; or
- (5) Is an HIO that arranges for services and becomes operational before January 1, 1986.

(b) *Entities eligible for other kinds of contracts.* A Medicaid agency may enter into a nonrisk contract, or a risk contract for a scope of services other than the scope specified in § 434.21(b), with any of the entities identified in paragraph (a) of this section, or with any other PHP.